

IN THE FIGURES

Applicant provides herewith a REPLACEMENT SHEET for Figure 10 correcting the objections thereto.

SUMMARY OF THE OFFICE ACTION

1. There is an objection to Figure 10 regarding numbering of elements in the Figure.
2. Claims 1-13, 22-25, 29-30, 37-38, 43-45 and 55 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 6,250,632 (Albrecht) in view of U.S. Patent No. 5,683,085 (Johnson '085) when further in view of U.S. Patent No. 5,240,140 (Huen).
3. Claims 14-21 and 26-28 have been rejected under 35 USC 103(a) as unpatentable over Johnson '248 in view of Albrecht and further in view of Johnson 5,683,085 when further in view of U.S. Patent No. 5,240,140 (Huen) and even when further considered with Purton et al. (International Patent Application Publication WO 00/51076) [**Applicants note the U.S. equivalent of Purton et al. as U.S. Patent No. 6,629,894**].

**ARGUMENTS IN RESPONSE TO THE ISSUES IN THE OFFICE
ACTION**

1. Objections to the number content of Figure 10 have been raised.

Applicants have amended the Figure to comply with the Objections. The Replacement Sheets are attached hereto.

2. Claims 1-13, 22-25, 29-30, 37-38, 43-45 and 55 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 6,250,632 (Albrecht) in view of U.S. Patent No. 5,683,085 (Johnson '085) when further in view of U.S. Patent No. 5,240,140 (Huen).

It is first to be noted that the rejection of record attempts to identify limitations in the claims, and then finds the individual limitations in one of three references, and then asserts that it is obvious to combine the structure of those limitations together to meet (teach to be obvious) the collective limitations of the claims. This attempted combination is not done with any reasoned or scientific analysis of the methodology of associating different structures. Each success reference combined requires the destruction and/or removal of the underlying structure needed for the benefits of the disclosed invention of that reference. The underlying combination, by such a random, self-destructing attempt to combine references must fail under 35 U.S.C. 103(a). Specific examples of the difficulty if not impossibility of these combinations will be pointed out in the arguments below.

As is always the situation where a combination of references has been cited under 35 USC 103(a) against claims of an application, it is essential to compare the actual limitations of the claims and the actual teachings of the cited references in the order in which they were combined. In the present case, this analysis will begin with the independent claims that have been rejected under this statutory provision in view of Albrecht

CLAIM 1	ALBRECHT	COMMENTS
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A device for forming a random set of playing cards comprising:		This function of a device is disclosed by Albrecht.
a top surface and a bottom surface of said device;		All physical apparatus have a nominative top and bottom.
a single card receiving area for receiving an initial set of playing cards <u>with access to the single card receiving area at the top surface;</u>	Albrecht has a single card receiving area 26, but it is fixed at a side of the device (Figure 1a) and not at the top of the device.	
a randomizing system for randomizing the order of an initial set of playing cards;		This function can be provided by Albrecht.
a single card collection surface in a card collection area for receiving randomized playing cards one at a time into the card collection area, the collection surface receiving cards so that all cards are received below the top surface of the device <u>with access to the card collection surface being from the same top surface as the single card receiving area;</u>	Albrecht has a single card collection surface 36 below the top of the device (Figure 1a). There is an opening 46 for access to the cards at the top of the device. HOWEVER, the access to the card collection area can be at the top surface, but there is no top surface position for the card receiving area.	As the card receiving area is NOT at the top of the device, the card receiving area access cannot be from the "same top surface" as recited in claim 1. These limitations are not shown in their entirety by Albrecht in view of Johnson '085. Johnson and Albrecht have card insertion surfaces at heights and positions that are NOT at the same top surface as the removal area.
<u>the device moving individual playing cards one at a time directly to the single card collection surface;</u>	Albrecht moves cards from the card insert area 26 one-at-a-time into the collection compartments 32.	The structure does NOT move cards one-at-a-time onto a single collection surface, but moves them one-at-a-time into different compartments 32 as opposed to the recited single card collection surface, wherein groups of cards are collectively dumped onto a single collection surface 36. THIS LIMITATION IS NOT SHOWN BY

		ALBRECHT.
an image capture device that reads the rank and suit of each card before being received on the card collection surface;	Abstract – “One embodiment provides a deck holding area in which cards are held for presenting a card to a read head for reading the characters on the face of the card.”	
an elevator for raising the single card collection surface so that at least some randomized cards are elevated for removal from the top surface of the device; and	“...a platform motor 44 is activated raising 45 (FIG. 2) the platform 36 and the sorted deck 42 to the deck removal area 46 (as shown in FIG. 5d).”	There is an elevator raising the ultimate collection surface so that randomized cards are elevated at least to the top surface. This is NOT a collection surface onto which cards were moved one-at-a-time as recited in the claims.
a moveable cover over the elevator and <u>fixed along one edge of the cover to the top surface.</u>		There is no moveable cover over the elevator of Albrecht.

The rejection acknowledges only that Albrecht does not disclose “...the randomizing system and gripping arm as claimed” and therefore references Johnson ‘085. It is clear that the rejection is fundamentally in error from the initial steps in the analysis as limitations not present in claim 1 are considered (the randomizing system, the gripping arms and the capability of being flush mounted, **none of which are in claim 1**). These references and acknowledgment of lack of limitations are spurious and incomplete. Furthermore, Albrecht clearly does not show the cover and there is no reference in claim 1 to gripping arms.

As should be readily seen, the Office action fails to acknowledge the presence of actual limitations in claim 1 that Albrecht does not disclose the limitations of claim 1 and all claims dependent therefrom. This rejection, with respect to claim 1 and all claims dependent therefrom is clearly in error unless the additional references teach these limitations that are missing from Albrecht. It will be clearly shown that the references **do not teach those limitations and/or the references cannot be combined with Albrecht.**

Johnson '085 does not teach a moveable hinged cover over the elevator. That reference cannot correct the deficiencies of the underlying citation of Albrecht.

Huen shows a card dispenser (not a shuffler) with a lid. The lid is actually the card-moving functional component in the dispenser, with prongs/grips 25 pushing cards out of the dispenser, one-at-a-time. Additionally, the lid of Huen is not over an elevator and only moves cards out of the device. It does not sit over an elevator in a card collection surface. The cover system of Huen is therefore not located in the area recited in the claim, performs functions not allowed in the present claims (Huen moves individual cards out of the device while the claims require the cover to allow access over a card collection surface).

Huen therefore:

- 1) does not show a shuffling device;
- 2) does not have a card collection surface;
- 3) does not have an elevator in a card collection surface;
- 4) does not have a hinged lid over a card collection surface; and
- 5) cannot have a card collection surface at a same top surface as the card receiving area.

Additionally, the technology of Huen does not readily combine with the combined technologies of Albrecht in view of Johnson '085. To locate the system of Huen over the card collection surface of Albrecht in view of Johnson, the ability to remove sets of randomized cards from the combined system would be defeated, as Huen dispenses **ONLY** single cards one-at-a-time. That would specifically frustrate the batch shuffling effect of providing completely removeable shuffled sets (e.g., at least one deck) of cards from a shuffling device. As the combined system of Albrecht in view of Johnson '085 would be clearly rendered far less efficient by having the card dispensing system of Huen added over an elevator of Albrecht, it is not obvious to add a system to greatly reduce the specific objective of both Albrecht and Johnson '085, the ability to provide a completely shuffled set of cards to a dealer.

Not only would the addition of a Huen system to the combination of Albrecht in view of Johnson deteriorate the shuffled set providing ability of the shuffler, but it would require dramatic, complex and valueless modifications in the combined shuffling system.

Because the cover of Huen is integrally functional in the delivery of individual cards, and the cards must be maintained flush with the rubber ejectors on Huen, the elevators of Albrecht in view of Johnson '085 would have to be incrementally moved upwards after the removal of each individual card. That would be a time-consuming and inefficient way of using the Albrecht in view of Johnson '085 system and it would detract from the system performance and complicate its operation.

It must be repeatedly emphasized that the cover on Huen is there for a specific and precise functional purpose in Figures 1 and 2, the movement of cards by the lid itself. In Figures 3 and 4, the Drawing is incomplete with respect to the description in the specification, but again, there are supposed to be studs 53 on the lid 37 to move the cards out of the dispenser. Although not shown in either Figures 3 or 4, the specification is absolutely clear that the lid again has studs to move the cards, as shown in column 3, lines 29-53. Note especially column 3, lines 35-39 where Huen states:

“The rear side of the compartment 38 is provided by a wedge member 40 which is resiliently biased forwards by a spring 52 so as to urge the stack of cards 39 forwards against studs 53 on the lid 37.”

The purposes of the lid of Huen are clearly designed for the movement of individual cards. It is unobvious to use a lid of Huen for that purpose in a device taught by Albrecht in view of Johnson '085. It is further not obvious to destroy the function of the lid of Huen in a card dispensing device merely to assert that it could be placed in a **non-equivalent position** in a card shuffler. Note again that the cover of Huen is placed over the card insertion area and not a card removal area.

Additionally, it is to be noted that not one of Albrecht, Johnson '085 or Huen has both a card receiving access and a card collection access at the top of the device, as **recited in claim 1**. Albrechts card receiving access is fixed at the side of the device. Johnson's card receiving access is at the side of the device, and Huen has no card collection surface at all. **It cannot be obvious to one skilled in the art to make a random design change in a combination of three references when none of the references has the specific structure recited in the claims.**

The combination of Albrecht in view of Johnson '085 and further in view of Huen must fail for at least those reasons.

The limitations of Claim 1 clearly establish novelty and unobviousness over each of the three references and the combination of the three references (Albrecht and Johnson and Huen) in **at least** the following ways.

This limitation clearly establishes unobviousness over the combination of three references.

B) The limitations of:

“...a single card collection surface in a card collection area for receiving randomized playing cards one at a time into the card collection area, the collection surface receiving cards so that all cards are received below the top surface of the device with access to the card collection surface being from the same top surface as the single card receiving area;...”

None of the three references teach:

“...access to the card collection surface being from the same top surface as the single card receiving area”

The card collection area of Johnson ‘085 is at a much higher level than the insert tray. The card insert area of Albrecht also is much lower than the level at which the card collection surface (36) must be raised for card removal. There is no separate collection surface of Huen, and the cards are then transported one-at-a-time to a delivery chute lower than the card insert area. The Applicants’ recited configuration of the card insert area and the opening to the card collection surface being near the same plane, and establishes unobviousness over the combination of the three references.

C) The limitation of:

“...the device moving individual playing cards one at a time directly to the single card collection surface;...”

Albrecht move cards first into compartments 30 and 32 of Albrecht and then drops them onto the collection surface in groups. Johnson ‘085 moves card directly, without an intervening set of compartments over a single card collection area, but then must remove cards from the card collection area by pick-off rollers which direct one card at a time to

the delivery chute. This fact is distinguished in the immediately following limitations of claim 1 and later where it is shown that the combination of individual elements of the three references becomes and exercise in destruction of essential functions of each reference and just plain bad engineering. Huen merely ejects single cards out from the card insert area.

D) The immediately following limitations of:

“...an elevator for raising the single card collection surface so that at least some randomized cards are elevated for removal from the top surface of the device; and

a moveable cover over the elevator and fixed along one edge of the cover to the top surface.”

Johnson ‘085 **does not have** an elevator that raises randomized cards for removal. Rather, the grippers raise sets of cards and individual cards are picked off the bottom of the randomized set. Albrecht does have an elevator (**but no moveable cover thereon, and no moveable hinged cover**) that raises cards to the top for removal, but that top of the device is not part of the same top surface as with the card receiving area. Huen has a moveable cover, but that cover is instrumentally necessary for the physical movement of individual cards out of the Huen device and the card receiving area cannot be at a same top surface with the card collection area as Huen has no card collection area in the device. Each of these limitations establishes unobviousness over the combination of all three references. One would have to combine teachings of the reference to the detriment of some of the references solely to move in a technical direction towards these limitations, yet never be able to establish those limitations based on the teaching of the references themselves.

A good example of this deficiency in the combination can be found in the disclosure cited by the Examiner that Albrecht desires a compact device. The device of Albrecht is not particularly compact because of the nature of the design in which an elevator is used. The device must have two adjacent shafts from top to bottom, increasing the width. But more importantly, the shuffling mechanism itself requires the

vertical array of compartments (30 and 32) and the card collection tray below that. To minimize the height of the shaft 88, Albrecht must use few chambers in the compartments (30 and 32). This reduces the randomization effect of the shuffler significantly, as only that number of cards as there are chambers can be randomized at one time, as cards are fed from their previous order in the input area of cards. This is a highly deficient system, unless large numbers of chambers are used. However, as more and more chambers are used, the height of the compartments (30 and 32) increases, and the height of the shaft below the compartments (30 and 32) down to the collection surface 36 must also increase.

One additional problem with the proposed combination of Albrecht and Johnson '085 is that both Johnson and Albrecht have card input regions (card receiving compartment) and card removal regions (access to the card collection area) at completely different elevations, which is excluded by the claims. Combining Huen with Albrecht and Johnson does not overcome that fault. That combination is not obvious based on the teachings of the references.

Additionally, the use of the Johnson '085 system in an elevator system such as Albrecht is neither obvious nor structurally insignificant. The Johnson '085 shuffler is complex enough, with the grippers lifting sections of sets of cards to insert cards, but then adding an elevator to the bottom of the collection surface (rather than directly picking them off as done by Johnson '085) adds significant technical complexity to the device, adding an elevator in the same vertical region of the shuffler where there are already grippers and lifting devices. Prospectively this is a complex route to move, even if Applicants achieved it.

It is long-standing Patent Law doctrine that "...one skilled in the art would not modify the device...to make it unsuitable for its intended purpose." (*Ex parte Rosenfeld*, (PTO Board of Patent Appeals, 1959), 130 U.S.P.Q. 113). In this case, the substitution of the elevator of Albrecht with the shuffling mechanism of Johnson '085 would remove the need for the elevators of Albrecht, as Johnson '085 picks individual cards from the bottom of the set of randomized cards. In addition, the use of the card moving cover of Huen would be complex, defeat the ability of sets of cards to be provided (as recited in

the claims), and provide no benefit to the system. That is an insupportable combination under 35 U.S.C. 103(a).

The function of the Johnson '085 shuffler must be appreciated to see how that structure does not teach the technology claimed herein. Although that reference teaches a card collection chamber over which cards are raised and lowered in groups, and in which cards are separated into separate sets for intermediate placement of single cards, the collection surface is rigid, immovable and does not move in any direction. It is especially not elevated for removal of playing cards. Cards are removed **from the bottom of the set of cards on the collection surface by nip rollers 29 and 30 to exit the delivery end 43 of the shuffler**. There is no elevation of the card collection surface to assist manual removal of playing cards at the top of the device and there is no moveable cover over the card collection surface or any other structure in Johnson '085.

It is further to be noted that the card collection surface of Johnson '085 is stationary (the bottom card collection surface DOES NOT MOVE) and the grippers move up and down adjacent the shaft. The card collection surface does not move.

It is to be further and critically noted that neither Albrecht nor Johnson '085 shows the moveable cover element recited in claim 1 (and all claims dependent therefrom), and in claims 30 and 35. **The teachings of Huen of adding a card ejecting lid have been thoroughly refuted.** On this basis alone, claim 1 (and all claims dependent therefrom), and claims 30 and 35 must be considered unobvious and patentable. The Johnson '085 reference adds nothing to the combination of references that overcomes the absolute and critical failure of the combination of Albrecht and Huen.

Applicants feel compelled to note that the fact that the shuffling mechanisms of the three references are so vastly different, they cannot be so gratuitously combined as is done in these rejections. Even though their objective is a unifying shuffling operation, the underlying structures and mechanisms are so vastly different in an engineering sense that the picking and choosing of the diverse elements for combination is like an attempt to create a fantastical animal, with organs and pieces from diverse animals that do not prospectively fit together in a simple or logical step. The attempt to select diverse components from a carousel shuffler (Johnson '248), a momentum evacuation of

chambers with gravity drop (Albrecht), and a grip and lift with bottom of the set pick off rollers (Johnson '085) is such a fantastic creature that has no logical prospective intent than to meet the limitations of the present claims.

The following claim chart will illustrate why the rejection under 35 USC 103(a) is in error with respect to claim 30. This rejection must fail as claim 30 contains the following limitations which have already been discussed and distinguished with respect to claims 1 and 23:

“...directly from the single card receiving area, the collection surface receiving cards so that all cards are received below the top surface of the device;

an image capture device that reads the rank and suit of each card after it has begun leaving the single card receiving area and before being received on the card collection surface;

an elevator for raising the collection surface so that at least some randomized cards are elevated for manual removal of playing cards from the top surface of the device; and

a moveable cover over the elevator and fixed along one edge of the cover to the top surface.

This claim is unobvious because of at least those limitations.

This claim also recites the presence of a moveable cover, an element that is not shown by any reference in the combination. On this basis alone, the claims must be considered further and independently novel and unobvious.

The following claim chart will illustrate why the rejection under 35 USC 103(a) is in error with respect to claim 37. This rejection must fail.

CLAIM 37	JOHNSON	COMMENTS
A method of randomizing a group of cards, comprising the steps of: placing a group of cards to	Disclosed by Johnson.	

be randomized into a card in-feed tray;		
removing cards individually from the card in-feed tray and delivering the cards into	Cards are moved individually.	
a card collection area, the card collection area having a moveable lower surface, and a stationary opening for receiving cards from the in-feed tray;		Johnson has an IMMOVEABLE card collection area with a stationary opening.
elevating the moveable lower surface to a randomly determined height;		Johnson ELEVATES SUBSETS OF CARDS AND DOES NOT ELEVATE THE COLLECTION SURFACE.
grasping at least one edge of a group of cards in the card collection area at a point just above the stationary opening;		As noted above, Johnson '085 grips individual sets of cards for insertion of cards, but never elevates cards for removal and removes cards from the bottom of the card collection surface.
lowering the moveable lower surface to create an opening in a stack of cards formed on the lower surface, the opening located just beneath a lowermost point where the cards are grasped;	Johnson 085 never raises the card collection surface to create an opening, and cannot create an opening between cards.	As noted above, Johnson '085 grips individual sets of cards for insertion of cards, but never elevates cards for removal and removes cards from the bottom of the card collection surface.
inserting a card removed from the in-feed tray into the opening;		As noted above, Johnson '085 grips individual sets of cards for insertion of cards, but never elevates cards for removal and removes cards from the bottom of the card collection surface.
after randomizing all cards, elevating a collection of randomized cards <u>seated on the single moveable card collection surface so that the randomized cards may be</u>	There is no elevation of a collection of randomized cards for removal, but picking off of cards from the bottom of the shuffled set.	This step is never performed by Johnson '085, and the elevation of a complete set by a system such as Albrecht would require use of a system in Johnson '085 that would

<u>manually removed from a top of the playing card randomizing device; and</u>		disable their ability to randomize (shuffle) playing cards.
Reading at least the rank of each card after it is individually removed from the card in-feed tray and before it has been inserted into the opening.		Johnson '085 has an opening into which cards are inserted. Albrecht has a differently located card-reading system.

The failure of Johnson to move the card collection surface has been shown to create a dead zone of cards that remain on the collection surface during shuffling, so that initial cards put onto the collection surface are not shuffled.

The additional limitations establish unobviousness over the combination of the three references, as discussed above with respect to claims 1 and 37.

Again, Applicants feel compelled to note that the fact that the shuffling mechanisms of the three references are so vastly different, they cannot be so gratuitously combined as is done in these rejections. Even though their objective is a unifying shuffling operation, the underlying structures and mechanisms are so vastly different in an engineering sense that the picking and choosing of the diverse elements for combination is like an attempt to create a fantastical animal, with organs and pieces from diverse animals that do not prospectively fit together in a simple or logical step. The attempt to select diverse components from a carousel shuffler (Johnson '248), a momentum evacuation of chambers with gravity drop (Albrecht), and a grip and lift with bottom of the set pick off rollers (Johnson '085) is such a fantastic creature that has no logical prospective intent than to meet the limitations of the present claims.

The following analysis will illustrate why the rejection under 35 USC 103(a) is in error with respect to claim 43. This rejection must fail for the same reasons as these limitations added to the claims establish unobviousness with respect to claims 1 and 30 as argued above.

“...a card receiver for accepting a group of cards to be shuffled by insertion of cards from an opening level with the gaming table surface;

a randomizing system for randomizing the order of an initial set of playing cards;

a single collection surface for receiving all randomized cards;

an elevator for raising the single collection surface to an elevation wherein all randomized cards may be manually removed through the gaming table surface;

a moveable cover hinged along one edge of the cover and moveable above the elevator; and...”

The following claim chart will illustrate why the rejection under 35 USC 103(a) is in error with respect to claim 45. This rejection must fail for the reasons described in the previous response that no reference of record describes a remote control for the operation of the shuffling device. All of the references are manually directed by a dealer physically in contact with the shufflers, and no device has any remote controls.

Each of the remaining independent claims has been clearly shown to be unobvious over the combination of the three references cited in this rejection. The rejection is in error and must be withdrawn.

Each of these claims is dependent claims from the claims rejected in paragraph 2. The additional Purton reference does not teach the limitations that were the basis for establishing Novelty under 35 USC 102(b) and unobviousness under 35 USC 103(a) in arguments presented in paragraph 2 and there is no basis for asserting those limitations to be obvious from the individual or combined teachings of these references. The rejection must fail for at least that reason, even without conceding that Albrecht does or does not teach the limitations for which it has been cited.

Claims 12-13, for example, address fine control of the collection surface on the elevator position. The elevator shaft of Johnson ‘085 is stationary and the grippers move up and down adjacent the shaft. The card collection surface does not move.

3. Claims 14-21 and 26-28 have been rejected under 35 USC 103(a) as unpatentable over Johnson ‘248 in view of Albrecht and further in view of Johnson 5,683,085

when further in view of U.S. Patent No. 5,240,140 (Huen) and even when further considered with Purton et al. (International Patent Application Publication WO 00/51076) [**Applicants note the U.S. equivalent of U.S. patent No. 6,629,894**]. Claims 26-28 have been canceled.

Each of these claims is dependent claims from the claims rejected in paragraph. The additional Huen reference does not teach the limitations that were the basis for establishing unobviousness under 35 USC 103(a) above and there is no basis for asserting those limitations to be obvious from the individual or combined teachings of these references. The rejection must fail for at least that reason, even without conceding that Johnson II does or does not teach the limitations for which it has been cited.

It must be noted that the rejection of record slips back and forth from one technology to another, ignoring previous statements, even though these claims are dependent from earlier rejected claims.

The rejection cites many lines of text from the references, as if the volume of citations proves a point. In fact, the volume of citations, without focusing on specific disclosure therein merely complicates the rejection, confuses issues, and obfuscates any underlying content of the rejection.

The addition of Purton does not improve on the deficiencies cited in paragraph 2) above. It is to be noted that even the “moveable cover” of Purton (element **521** in Figures 18 and 19) do not assist in this rejection. That cover is hinged at the base of the shuffler and when opened, exposes the internal card moving elements and does not provide access over the card insert area or the card collection area.


REMARKS

The above amendments and arguments clearly establish that the rejections are in error and must be withdrawn.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Mark A. Litman at (952)832-9090.

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The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being sent by first class mail with First Class postage prepaid to the US Postal Service in an envelope addressed to: Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 23 February 2009.

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